

[COMMITTEE PRINT]

June 23, 2000

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Medical Financial Pri-
3 vacy Protection Act”.

4 **SEC. 2. USE AND DISCLOSURE OF HEALTH INFORMATION**
5 **BY FINANCIAL INSTITUTIONS.**

6 (a) IN GENERAL.—Title V of the Gramm-Leach-Bli-
7 ley Act (15 U.S.C. 6801 et seq.) is amended by inserting
8 after section 502 the following:

9 **“SEC. 502A. SPECIAL RULES FOR HEALTH INFORMATION.**

10 **“(a) RULES FOR DISCLOSURE.—**

11 **“(1) GENERAL RULE REQUIRING AFFIRMATIVE**
12 **CONSENT FOR DISCLOSURE.—**

13 **“(A) IN GENERAL.—**A financial institution
14 may not disclose any individually identifiable
15 health information pertaining to a consumer to
16 an affiliate or a nonaffiliated third party unless
17 the financial institution—

18 **“(i)** has provided to the consumer a
19 clear and conspicuous notice in writing, in
20 electronic form, or in another form per-



1 mitted by the regulations implementing
2 this subtitle, of the categories of such in-
3 formation that may be disclosed and the
4 categories of affiliates or nonaffiliated
5 third parties to whom the financial institu-
6 tion discloses such information;

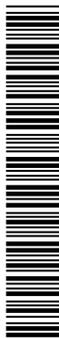
7 “(ii) has clearly and conspicuously re-
8 quested in writing, in electronic form, or in
9 another form permitted by the regulations
10 implementing this subtitle, that the con-
11 sumer affirmatively consent to such disclo-
12 sure; and

13 “(iii) has obtained from the consumer
14 such affirmative consent and such consent
15 has not been withdrawn.

16 “(B) WITHDRAWAL OF CONSENT.—Any
17 withdrawal of consent is subject to the rights of
18 any financial institution that acted in reliance
19 on the consent prior to its withdrawal.

20 “(2) DISCLOSURE OF INFORMATION ABOUT
21 PERSONAL SPENDING HABITS.—

22 “(A) IN GENERAL.—If a financial institu-
23 tion provides a service to a consumer through
24 which the consumer makes or receives payments
25 or transfers by check, debit card, credit card, or



1 other similar instrument, the financial institu-
2 tion may not disclose any information described
3 in subparagraph (B) pertaining to the con-
4 sumer to an affiliate or a nonaffiliated third
5 party unless the financial institution has satis-
6 fied the requirements of clauses (i), (ii), and
7 (iii) of paragraph (1)(A) with respect to the dis-
8 closure.

9 “(B) INFORMATION DESCRIBED.—The in-
10 formation described in this paragraph is—

11 “(i) an individualized list of a con-
12 sumer’s transactions or an individualized
13 description of a consumer’s interests, pref-
14 erences, or other characteristics; or

15 “(ii) any such list or description con-
16 structed in response to an inquiry about a
17 specific, named individual;

18 if the list or description is derived from individ-
19 ually identifiable health information collected in
20 the course of providing a service described in
21 subparagraph (A) to the consumer.

22 “(3) DISCLOSURE OF AGGREGATE LISTS.—A fi-
23 nancial institution may not disclose any aggregate
24 list of consumers containing or derived from individ-
25 ually identifiable health information to an affiliate or



1 a nonaffiliated third party unless the financial insti-
2 tution has satisfied, for each consumer on the list,
3 the requirements of clauses (i), (ii), and (iii) of para-
4 graph (1)(A) with respect to the disclosure.

5 “(4) EXCEPTIONS TO DISCLOSURE LIMITA-
6 TIONS.—This section shall not restrict a financial in-
7 stitution from disclosing individually identifiable
8 health information, or any other information de-
9 scribed in paragraph (2)(B) or (3)—

10 “(A) for a purpose described in paragraph
11 (1), (2), (3), (5), (7), or (8) of section 502(e);

12 “(B) in order to facilitate customer service,
13 such as maintenance and operation of consoli-
14 dated customer call centers or the use of con-
15 solidated customer account statements;

16 “(C) to the institution’s attorneys, ac-
17 countants, and auditors, a State guaranty fund
18 in connection with the resolution of an insolvent
19 insurer, or an insurance rate advisory organiza-
20 tion in connection with the establishment of
21 rates for particular lines of insurance;

22 “(D) in connection with performing serv-
23 ices for or functions solely on behalf of the fi-
24 nancial institution with respect to the financial
25 institution’s own customers, including mar-



1 keting of the financial institution’s own prod-
2 ucts or services to the financial institution’s
3 customers; or

4 “(E) for any purpose related to the admin-
5 istration or replacement of a group health plan
6 (as defined in section 733 of the Employee Re-
7 tirement Income Security Act of 1974 (29
8 U.S.C. 1191b)) or workers’ compensation pol-
9 icy.

10 “(5) LIMITS ON REDISCLOSURE AND REUSE OF
11 INFORMATION.—

12 “(A) IN GENERAL.—Except as provided in
13 subparagraph (B), an affiliate or a nonaffiliated
14 third party that receives individually identifiable
15 health information from a financial institution
16 under this section shall not disclose such infor-
17 mation to any other person, unless such disclo-
18 sure would be lawful if made directly to such
19 other person by the financial institution.

20 “(B) DISCLOSURE UNDER AN EXCEP-
21 TION.—Notwithstanding subparagraph (A), any
22 person that receives individually identifiable
23 health information from a financial institution
24 in accordance with one of the exceptions in



1 paragraph (4) may use or disclose such infor-
2 mation only—

3 “(i) as permitted under that excep-
4 tion; or

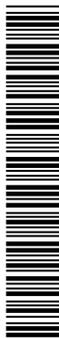
5 “(ii) under another exception in such
6 paragraph to carry out the purpose for
7 which the information was disclosed by the
8 financial institution.

9 “(6) CONSTRUCTION.—Except as provided in
10 paragraph (4)(A), this section applies in lieu of sub-
11 sections (b), (c), and (e) of section 502 to a disclo-
12 sure by a financial institution of individually identifi-
13 able health information.

14 “(b) RULES FOR RECEIPT AND USE.—

15 “(1) IN GENERAL.—In deciding whether, or on
16 what terms, to offer, provide, or continue to provide
17 a loan or credit to a consumer, a financial institu-
18 tion shall not request to receive individually identifi-
19 able health information about the consumer from an
20 affiliate or nonaffiliated third party, or use, evaluate,
21 or otherwise consider any such information, unless
22 the financial institution—

23 “(A) has clearly and conspicuously re-
24 quested in writing, in electronic form, or in an-
25 other form permitted by the regulations imple-



1 menting this subtitle, that the consumer affirm-
2 atively consent to such receipt and use; and

3 “(B) has obtained from the consumer such
4 affirmative consent and such consent has not
5 been withdrawn.

6 “(2) RESTRAINT ON INFORMATION RE-
7 QUESTS.—In deciding whether, or on what terms, to
8 offer, provide, or continue to provide a loan or credit
9 to a consumer, a financial institution shall not re-
10 quest the consent described in paragraph (1)(A) to
11 receive individually identifiable health information
12 available from an affiliate, unless the financial insti-
13 tution otherwise in the ordinary course of rendering
14 the decision would, if that information were not
15 available from an affiliate, request consent to receive
16 the same or substantially similar information from a
17 nonaffiliated third party.

18 “(c) CONSUMER RIGHTS TO ACCESS AND CORRECT
19 INFORMATION.—

20 “(1) ACCESS.—

21 “(A) IN GENERAL.—Upon the request of a
22 consumer, a financial institution shall make
23 available to the consumer individually identifi-
24 able health information about the consumer



1 that is within the possession of the financial in-
2 stitution.

3 “(B) EXCEPTIONS.—Notwithstanding sub-
4 paragraph (A), a financial institution—

5 “(i) shall not be required to disclose
6 to a consumer any confidential commercial
7 information, such as an algorithm used to
8 derive credit scores or other risk scores or
9 predictors;

10 “(ii) shall not be required to create
11 new records in order to comply with the
12 consumer’s request;

13 “(iii) shall not be required to disclose
14 to a consumer any information assembled
15 by the financial institution, in a particular
16 matter, as part of the financial institu-
17 tion’s efforts to comply with laws pre-
18 venting fraud, money laundering, or other
19 unlawful conduct; and

20 “(iv) shall not disclose any informa-
21 tion required to be kept confidential by any
22 other Federal law.

23 “(2) CORRECTION.—

24 “(A) OPPORTUNITY TO DISPUTE.—A fi-
25 nancial institution shall provide a consumer the



1 opportunity to dispute the accuracy of any indi-
2 vidually identifiable health information disclosed
3 to the consumer pursuant to paragraph (1),
4 and to present evidence thereon.

5 “(B) AMENDMENT, CORRECTION, OR DE-
6 LETION.—A financial institution—

7 “(i) shall amend, correct, or delete
8 material information identified by a con-
9 sumer that is materially incomplete or in-
10 accurate; or

11 “(ii) shall notify the consumer of—

12 “(I) its refusal to make such
13 amendment, correction, deletion;

14 “(II) the reasons for the refusal;
15 and

16 “(III) the identity of the person
17 who created the information and shall
18 refer the consumer to that person for
19 purposes of amending or correcting
20 the information or filing with it a con-
21 cise statement of what the consumer
22 believes to be the correct information.

23 “(3) COORDINATION AND CONSULTATION.—In
24 prescribing regulations implementing this subsection,
25 the Federal agencies specified in section 504(a) shall



1 consult with one another to ensure that the
2 regulations—

3 “(A) impose consistent requirements on
4 the financial institutions under their respective
5 jurisdictions;

6 “(B) take into account conditions under
7 which financial institutions do business both in
8 the United States and in other countries; and

9 “(C) are consistent with the principle of
10 technology neutrality.

11 “(4) CHARGES FOR DISCLOSURES.—A financial
12 institution may impose a reasonable charge for mak-
13 ing a disclosure under this subsection, which charge
14 shall be disclosed to the consumer before making the
15 disclosure.

16 “(d) SPECIAL REQUIREMENT TO PROTECT ESPE-
17 CIALLY SENSITIVE HEALTH INFORMATION.—In any case
18 in which this section requires a person to obtain a con-
19 sumer’s affirmative consent to a receipt, use, or disclosure
20 of individually identifiable health information, the person
21 shall obtain a separate and specific consent with respect
22 to any information pertaining to—

23 “(1) mental health services received by an indi-
24 vidual; or



1 “(2) human immunodeficiency virus (commonly
2 known as HIV), acquired immune deficiency syn-
3 drome, or any other sexually transmitted disease.

4 “(e) RELATIONSHIP TO OTHER LAWS.—Nothing in
5 this section shall be construed as—

6 “(1) modifying, limiting, or superseding stand-
7 ards promulgated by the Secretary of Health and
8 Human Services under—

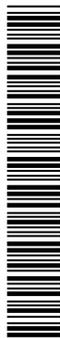
9 “(A) part C of title XI of the Social Secu-
10 rity Act (42 U.S.C. 1320d et seq.); or

11 “(B) section 264(c) of the Health Insur-
12 ance Portability and Accountability Act of 1996
13 (Public Law 104–191; 110 Stat. 2033); or

14 “(2) authorizing the use or disclosure of indi-
15 vidually identifiable health information in a manner
16 other than as permitted by other applicable law.”.

17 (b) DEFINITIONS.—Section 509 of the Gramm-
18 Leach-Bliley Act (15 U.S.C. 6809) is amended by adding
19 at the end the following:

20 “(12) INDIVIDUALLY IDENTIFIABLE HEALTH
21 INFORMATION.—The term ‘individually identifiable
22 health information’ means any information, includ-
23 ing demographic information obtained from or about
24 an individual, that is described in section



1 1171(6)(B) of the Social Security Act (42 U.S.C.
2 1320d(6)(B)).”.

3 (c) CLERICAL AMENDMENT.—The table of contents
4 for the Gramm-Leach-Bliley Act is amended by inserting
5 after the item relating to section 502 the following:

“Sec. 502A. Special rules for health information.”.

6 **SEC. 3. REGULATIONS; EFFECTIVE DATE.**

7 (a) REGULATIONS.—

8 (1) REGULATORY AUTHORITY.—Section 504(a)
9 of the Gramm-Leach-Bliley Act (15 U.S.C. 6804(a))
10 shall apply to the issuance of regulations to carry
11 out the amendments made by this Act in the same
12 manner as such section applies to the issuance of
13 other regulations to carry out subtitle A of title V
14 of the Gramm-Leach-Bliley Act, except as provided
15 in paragraph (4).

16 (2) AUTHORITY TO GRANT EXCEPTIONS.—The
17 regulations issued to carry out the amendments
18 made by this Act may include such additional excep-
19 tions to the provisions of section 502A of the
20 Gramm-Leach-Bliley Act, as inserted by section 2,
21 as are deemed consistent with the purposes of sub-
22 title A of title V of such Act, except as provided in
23 paragraph (3)(B).

24 (3) SPECIAL PROTECTIONS FOR ESPECIALLY
25 SENSITIVE HEALTH INFORMATION.—



1 (A) IN GENERAL.—The regulations issued
2 to carry out the amendments made by this Act
3 shall, where appropriate, include special policies
4 and procedures to protect the confidentiality of
5 individually identifiable health information per-
6 taining to—

7 (i) mental health services received by
8 an individual; and

9 (ii) human immunodeficiency virus
10 (commonly known as HIV), acquired im-
11 mune deficiency syndrome, and any other
12 sexually transmitted disease.

13 (B) AUTHORITY TO GRANT EXCEPTIONS.—
14 The regulations issued to carry out the amend-
15 ments made by this Act may not include any
16 exception to the provisions of section 502A of
17 the Gramm-Leach-Bliley Act, as inserted by
18 section 2, that diminishes the protection af-
19 forded by such section to the confidentiality of
20 individually identifiable health information per-
21 taining to—

22 (i) mental health services received by
23 an individual; or

24 (ii) human immunodeficiency virus
25 (commonly known as HIV), acquired im-



1 mune deficiency syndrome, or any other
2 sexually transmitted disease.

3 (4) DEADLINE.—Regulations to carry out the
4 amendments made by this Act shall be issued in
5 final form not later than 6 months after the date of
6 the enactment of this Act.

7 (b) EFFECTIVE DATE.—The amendments made by
8 this Act shall take effect 6 months after the date on which
9 regulations are required to be issued under subsection
10 (a)(4), except to the extent that a later date is specified
11 in such regulations.

